September 2021

Decision in CPLR Article 78 proceedings - Parsons, Trent (2011-08-25)

STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

_____X

In the Matter of the Application of
TRENT PARSONS, #93-A-5945,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION AND JUDGMENT
RJI #16-1-2011-0187.38
INDEX # 2011-428
ORI #NY016015J

-against-

ANDREA W. EVANS, Chief Executive Officer,
NYS Division of Parole and Chairwoman, NYS
Board of Parole,
Respondent.

_____X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Trent Parsons, verified on April 26, 2011 and filed in the Franklin County Clerk's office on April 29, 2011. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging the May 2010 determination denying him parole and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on May 6, 2011 and has received and reviewed respondent's Answer, including Confidential Exhibits B and D, supported by the Affirmation of Brian J. O'Donnell, Esq., Assistant Attorney General, dated June 29, 2011. The Court has received no Reply thereto from petitioner.

On July 9, 1993 petitioner was sentenced in Supreme Court, New York County, to concurrent indeterminate sentences of 4 years to life and 3 to 6 years upon his convictions of the crimes of Attempted Criminal Possession of a Weapon 3° and Attempted Criminal Sale of a Controlled Substance 3°. The offense underlying petitioner's attempted weapon

possession conviction/sentence was committed on December 1, 1992, while petitioner was at liberty under parole supervision from a previously-imposed sentence. The offense underlying petitioner's attempted sale of a controlled substance conviction/sentence was committed less than two and one-half months later, on February 11, 1993, while petitioner was out on bail from the attempted weapon possession charge.

After having been denied discretionary parole release on seven previous occasions petitioner made his eighth appearance before a Parole Board on May 25, 2010. Following that appearance a decision was rendered again denying petitioner parole and directing that he be held for an additional 24 months. All three parole commissioners concurred in the denial determination which reads as follows:

> "PAROLE DENIED. AFTER A PERSONAL INTERVIEW, RECORD REVIEW, AND DELIBERATION, THIS PANEL FINDS YOUR RELEASE IS INCOMPATIBLE WITH THE PUBLIC SAFETY AND WELFARE. YOUR INSTANT OFFENSES OF ATT. CPW 3RD AND ATT. CSCS 3RD OCCURRED WHILE YOU WERE ON PAROLE. PAST PROBATION, LOCAL JAIL TIME AND A PRIOR PRISON TERM ALL FAILED TO DETER YOU FROM COMMITTING THE INSTANT OFFENSES. CONSIDERATION HAS BEEN GIVEN TO YOUR DENIAL OF AN EARNED ELIGIBILITY CERTIFICATE AND RECEIPT OF TWO DISCIPLINARY VIOLATIONS SINCE YOUR LAST PAROLE HEARING. DUE TO THIS POOR COMPLIANCE WITH DOCS RULES, YOUR RELEASE AT THIS TIME IS DENIED. THERE IS A REASONABLE PROBABILITY YOU WOULD NOT LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW."

The parole denial determination was affirmed on administrative appeal. This proceeding ensued.

Executive Law §259-i(2)(c)(A) provides, in relevant part, as follows: "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable

probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates . . . [and] (iii) release plans including community resources, employment, education and training and support services available to the inmate . . .” In addition to the above, where, as here, the minimum period of imprisonment was established by the sentencing court, the Board must also consider the seriousness of the underlying offense (with “due consideration” to, among other things, the “recommendations of the sentencing court . . .”) as well as the inmate’s prior criminal record. *See* Executive Law §259-i(2)(c)(A) and §259-i(1)(a).

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5)) unless there has been a showing of irrationality bordering on impropriety. *See Silmon v. Travis,* 95 NY2d 470, *Vasquez v. Dennis*on, 28 AD3d 908, *Webb v. Travis*, 26 AD3d 614 and *Coombs v. New York State Division of Parole*, 25 AD3d 1051. Unless the petitioner makes a “convincing demonstration to the contrary” the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Nankervis v. Dennison,* 30 AD3d 521*, Zane v. New York State Division of Parole*, 231 AD2d 848 and *Mc Lain v. Division of Parole*, 204 AD2d 456.

It is petitioner's contention that the Parole Board failed to adequately address and consider all relevant statutory factors, focusing instead on his prison disciplinary record, the nature of the offenses underlying his current incarceration and his prior criminal history. Although petitioner acknowledges that the severity of the offense(s) underlying an inmate's incarceration is a relevant factor that may be considered by a Parole Board, he asserts that " . . . it is not to be the determining factor . . ." Petitioner further asserts as follows:

> " . . . [T]he law is even clearer that at a second or subsequent parole board interview, they [presumably the Parole Board] may only focus on the inmate's prison records such as: temporary release participation, release plans; or potential employment offers. The focus is not to be centered on the seriousness of the offense or the inmate's prior criminal record.
>
> This was petitioner's [eighth] parole board appearance, yet the board only focused on two minor misbehavior reports; as well as the nature of the crime (again); the petitioner's criminal history (again). This was their reasoning (again) to deny petitioner release and hold again for 24 months."

A parole board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Martin v. New York State Division of Parole*, 47 AD3d 1152, *Porter v. Dennison*, 33 AD3d 1147 and *Baez v. Dennison,* 25 AD3d 1052, *lv den* 6 NY3d 713. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination ". . . is not to assess whether the Board gave the proper weight to the relevant factors, but only whether the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that

it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior." *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

A review of the Inmate Status Report and the transcript of the parole hearing reveals that the Board had before it, and considered, the appropriate statutory factors including petitioner's programming/ vocational record (including the fact that he was denied an Earned Eligibility Certificate), disciplinary record, release plans, as well as the circumstances of the crimes underlying his incarceration (including the fact that such crimes were committed while on parole) and prior criminal record. *See Zhang v. Travis*, 10 AD3d 828. During the course of the May 25, 2010 parole interview, moreover, petitioner was afforded an opportunity to discuss matters he considered relevant to the discretionary parole release determination. In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole,* 25 AD3d 1058 and *Zhang v. Travis*, 10 AD3d 828.

Since the requisite statutory factors were considered, and given the narrow scope of judicial review of discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality bordering on impropriety as a result of the emphasis placed by the Board on the denial of an Earned Eligibility Certificate, the circumstances of the crime underlying petitioner's incarceration, his prior criminal record and his prison disciplinary record. *See Perez v. Evans,* 76 AD3d 1130, *Hall v. New York State Division of Parole,* 66 AD3d 1322 and *Pearl v. New York State Division of Parole,* 25 AD3d 1058.

Finally, the Court finds no statutory, regulatory or judicial authority barring a Parole Board from considering the nature of the offense underlying an inmate's incarceration or his/her prior criminal record at such inmate's second and subsequent Board appearances.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: August 25, 2011 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice